



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWT/169763

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2015, under , to review a decision by the Bureau of Children's Services (BCS), Department of Health Services, in regard to Medical Assistance (MA), a telephonic hearing was held on December 08, 2015. The record was held open 41 days post-hearing to allow the exchange of new information with the BCS, which occurred. The BCS issued a summary on January 11, 2016 which stated that its decision to deny the application remained unchanged.

The issue for determination is whether the agency correctly denied the petitioner's Katie Beckett MA application because the petitioner does not meet the "level of care" requirement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submittal of: Michelle Green, RN
Bureau of Long-Term Support
1 West Wilson
PO Box 7850
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Washington County. He lives at home with his parents.
2. Petitioner applied to receive Katie Beckett MA on July 1, 2015.
3. By a letter dated October 21, 2015, the BCS informed petitioner's parents that petitioner did not meet the Level of Care requirements necessary for eligibility for Katie Beckett MA.
4. The petitioner, age 1 year and 4 months at the time of the decision to deny eligibility, is diagnosed with prenatal stroke, developmental delay, right hemiparesis, and hemiplegic cerebral palsy.

DISCUSSION

The purpose of the "Katie Beckett" waiver is to encourage cost savings to the government by permitting disabled children, who would otherwise be institutionalized, to receive MA while living at home with their parents. Sec. 49.47(4)(c)1m, Wis. Stats. The agency is required to review Katie Beckett waiver applications in a five-step process. The first step is to determine whether the child is age 18 or younger and disabled. Petitioner meets this first standard. The second step is to determine whether the child requires a level of care that is typically provided in a hospital, nursing home, or ICF-MR. The agency determined that petitioner does not require this level of care. (The remaining three steps are assessment of appropriateness of community-based care, costs limits of community-based care, and adherence to income and asset limits for the child.)

There currently are four levels of care: hospital (HOS), psychiatric (SED), nursing home (NH), and care facility for the developmentally disabled (ICF-DD). They may be reviewed online at <https://www.dhs.wisconsin.gov/clts/cltsloc.pdf>.

The SED is for children with severe emotional disorders. The ICF-DD level is for individuals with extreme cognitive impairments similar to mental retardation. The HOS level of care requires that the child need frequent and complex medical care that requires the use of equipment to prevent life-threatening situations. The child with a NH LOC has a long-term medical or physical condition, which significantly diminishes his/her functional capacity and interferes with the ability to perform age appropriate activities of daily living (ADLs) at home and in the community. *Id.* at p.22. Such a child also requires an extraordinary degree of daily assistance from others to meet everyday routines and special medical needs. These special medical needs must warrant skilled nursing interventions that require specialized training and monitoring that is significantly beyond that which is routinely provided to children.

There is no evidence to suggest he meets these levels. The closest he comes to meeting is the NH LOC, however, he does not require nursing interventions or have substantial functional limitations in 2 of the following areas:

1. **Learning:** A 30% (25% if the child is under one year of age) or greater delay or a score of at least 2 (1.5 if the child is under one year of age) standard deviations below the mean based on valid, standardized and norm referenced measures of aggregate intellectual functioning.
2. **Communication:** A substantial functional limitation in communication is defined as a 30% (25% if under one year) or greater delay or a standard score of at least 2 (1.5 if under one year) standard deviations below the mean on valid, standardized and norm referenced measures of BOTH expressive and receptive communication functioning.

3. **Self Care:** Refer to APPENDIX B. This Appendix describes the degree of deficit required in activities of daily living (self care) to meet a substantial functional limitation based on the child's age. Child must demonstrate a deficit in at least ONE of the following five areas of self care:

1. Bathing
2. Grooming
3. Dressing
4. Toileting
5. Eating

4. **Mobility:** Refer to APPENDIX B. This Appendix describes the degree of deficit required in mobility to meet a substantial functional limitation based on the child's age. The inability to run or to move long distances or between environments related to stamina or ease of movement is NOT a mobility deficit.

Social Competency: Refer to APPENDIX A. This Appendix lists deficits in social skills by age groups that demonstrate a substantial functional limitation in social competency.

6. **Work:** Needs direct, hands-on assistance every day to perform their job, significantly beyond the typical assistance needed by other employees with similar duties to complete their job duties. This applies only to children over 16 years or age.

7. **Meal Preparation or Money Management:** Refer to APPENDIX B. This Appendix describes the degree of deficit required in meal preparation or money management to meet a substantial functional limitation based on the child's age. This applies only to children over 18 years of age.

This is not meant to diminish the challenges petitioner faces, however, I must agree based on the evidence before me that the petitioner does not meet the LOC criteria, and the agency correctly denied his application for Katie Beckett MA. If the petitioner's mother has more evidence to show that these facts are untrue, she can request a rehearing as described below.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

If petitioner develops better evidence or his conditions worsen, he can always reapply. I also refer petitioner's parents to page 6 of the agency's January 11, 2016 summary wherein the writer identifies other options for potential MA coverage for the petitioner.

CONCLUSIONS OF LAW

The agency correctly denied the petitioner's Katie Beckett MA application because the petitioner does not meet the "level of care" requirement.

THEREFORE, it is

ORDERED

The petition for review herein be dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

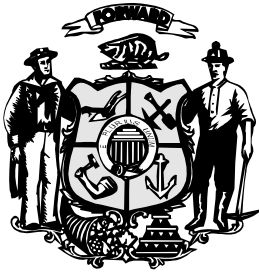
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of February, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 10, 2016.

Bureau of Long-Term Support